

**ENTERED**

January 31, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

JOE ANGEL ACOSTA III,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL NO. 2:16-CV-149

**ORDER**

The Court has before it Respondent's Motion for Summary Judgment (Dkt. No. 24), Petitioner's response (Dkt. No. 25), the Memorandum and Recommendation ("M&R") of the Magistrate Judge to whom this case was referred (Dkt. No. 27), and Petitioner's objections to the M&R (Dkt. No. 29).

Petitioner Joe Angel Acosta III ("Acosta") brings his habeas corpus petition challenging his 2012 conviction for aggravated assault with a deadly weapon. Dkt. No. 1. On October 14, 2016, Respondent filed a Motion for Summary Judgment, arguing that Acosta's petition should be dismissed without prejudice as a mixed petition that includes both exhausted and unexhausted claims. Dkt. No. 24 at 13-15. In his response, Acosta argues that the Court should impose a *Rhines* stay so that he may exhaust his unexhausted claims in state habeas proceedings. Dkt. No. 25.

On November 30, 2016, the Magistrate Judge to whom this case was referred pursuant to 28 U.S.C. § 636 issued an M&R in which he recommends that the Court grant Respondent's motion for summary judgment and dismiss Acosta's mixed petition. Dkt. No. 27. Specifically, the Magistrate Judge concludes that Acosta has not sufficiently attempted to exhaust his claims via state habeas proceedings and that it would be inappropriate to keep only Acosta's exhausted claims. *Id.* at 16.

Acosta objects to the M&R and argues that he exhausted three additional claims, that his failure to exhaust his other claims should be excused as a fundamental miscarriage of justice and because of ineffective assistance from the

Texas State Counsel for Offenders relating to his state habeas action, and reiterates his request for a *Rhines* stay. Dkt. No. 29.

After independently reviewing the record and applicable law, the Court finds that Acosta's objections are not supported by law or evidence. As the Magistrate Judge concluded, Acosta has not provided sufficient justification to impose a stay under *Rhines v. Weber*, 544 U.S. 269 (2005).

Accordingly, the Court **OVERRULES** Acosta's objections to the M&R (Dkt. No. 29) and **ADOPTS** the Magistrate Judge's November 30, 2016, M&R (Dkt. No. 27). The Court **GRANTS** Respondent's Motion for Summary Judgment (Dkt. No. 24), **DISMISSES** Acosta's Petition for a writ of habeas corpus (Dkt. No. 1), and **DENIES** Acosta a certificate of appealability. The Court **DENIES AS MOOT** Acosta's self-styled appeals from magistrate orders (Dkt. Nos. 44, 47). Final Judgment in this case will be entered separately in accordance with Federal Rule of Civil Procedure 58.

SIGNED this 31st day of January, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle  
Senior United States District Judge